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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,257	08/17/2001	Naoki Tsukiji	210424US8	2728

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

ZAHN, JEFFREY N

ART UNIT	PAPER NUMBER
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2828

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,257

Applicant(s)

TSUKIJI ET AL.

Examiner

Jeffrey N Zahn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.


- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.


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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claims 1-36, the following claim language is unclear/vague: 1) what structural element is the "temperature element" configured to measure? 2) what comprises the claimed "temperature measuring element",? 3) how is the said temperature measuring element configured to measure temperature? 4) how is the control unit physically connected to the other claimed elements to control the temperature 5) how does the diffraction grating relate to the semiconductor laser? Where is it within the claimed structure? and 6) the term "configured" is indefinite/unclear/vague and provides no basis to establish a structure to support "oscillate plural longitudinal modes." This list is not exhaustive. The claims contain mostly functional language without any specific structural elements and cooperative relationships between the elements to support the claimed functions. Accordingly, without structure to support the functional language, the functional language does not further limit the claim.

Regarding Claims 13-14 and 17-25, it is unclear/vague what the Applicant regards as "a means for detecting a driving current" and "a means for controlling said temperature regulating unit."

Regarding Claim 19, it is unclear/vague what the Applicant regards as "a means for storing said control function."

Regarding Claim 20, it is unclear/vague what the Applicant regards as "a means for setting a desired wavelength and a means for storing plural control functions."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Sato (US 6393041).

Sato discloses a semiconductor laser device comprising:

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a semiconductor laser element (1);
a temperature measuring element (6) configured to measure a temperature;
a temperature regulating (5) unit having said semiconductor laser element and said temperature measuring element thermally connected thereto;
a current detecting unit (10) configured to detect a driving current applied to said semiconductor laser element; and
a control unit configured to control said temperature regulating unit using a control function to achieve a substantially constant wavelength output (abstract) from said semiconductor laser element, said control function defining a relationship between a predetermined driving current and a predetermined temperature, said control unit being configured to control said temperature regulating unit such that the temperature detected by said temperature measuring element substantially equals the predetermined temperature corresponding to the detected driving current as defined by said control function. (col. 14, line 9- col. 7, line 11)

In addition, Sato discloses a heat extractor (3), an active layer (1), a storage unit (5) for setting desired wavelengths (col. 5, line 55- col. 6, line 65) and a thermistor (12).

Note: The phrase "wherein said semiconductor laser element includes a diffraction grating and is configured to oscillate plural longitudinal modes" is not given patentable weight for purpose of this examination because of the 35 U.S.C. §112 issues discussed above.

Regarding Claims 26-36, these method claims are inherent of the structure disclosed and discussed above in regards to Sato.

Response to Arguments

Applicant's arguments filed 30 June 2003 have been fully considered but they are not persuasive.

The Applicant argues that the "breadth of a claim is not equated with indefiniteness"; therefore the 35 U.S.C. § 112 rejections are traversed by the Applicant. While it is true that the "breadth of a claim is not equated with indefiniteness", the Applicant must clearly establish the metes and bounds of the claimed invention such that one of ordinary skill in the art can ascertain what the Applicant is claiming. The Claims of this Application are indefinite for the reasons cited above as related to the issue of indefiniteness.

The Applicant argues that the "means for" clauses are definite. To correct this situation please identify in the specification those sections (pages, paragraphs, lines) that any "means for" clause refers. In addition, this will clearly establish on the record that structure the Applicant is claiming.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not


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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey N Zahn whose telephone number is 703-305-3443. The examiner can normally be reached on M-F: 8:30-5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Ip can be reached on 703-308-3098. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

 8/20/23
Jeffrey Zahn


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